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June 7, 2011

BY E.C.F.

Honorable Raymond J. Dearie
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Cesar Coca, et al. v. City of New York, et al.
10 Civ. 4084 (RJD) (SMG)

Your Honor:

I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendants in the above-referenced matter. In that capacity, I write to inform the Court that the parties have reached a settlement in this matter. Accordingly, please enclose a proposed Stipulation of Settlement and Order of Dismissal, executed by counsel for the parties, submitted for the Court's endorsement.

I thank the Court for its time and consideration of this matter.

Respectfully submitted,

s/ _____

Matthew Weir
Assistant Corporation Counsel
Special Federal Litigation Division

Encl.

cc: Hon. Steven M. Gold, United States Magistrate Judge (by E.C.F.)

Michael Lumer, Esq., attorney for plaintiffs (by E.C.F.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CESAR COCA and MICHAEL COCA

Plaintiffs,

- against -

THE CITY OF NEW YORK, CHRISTOPHER
SCHILLING, and JOHN/JANE DOES 1 through 3,

Defendants.

-----X

**STIPULATION OF
SETTLEMENT AND ORDER OF
DISMISSAL**

10 CV 4084 (RJD) (SMG)

WHEREAS, plaintiffs commenced this action by filing a complaint in the Eastern District of New York on or about September 7, 2010, alleging that the defendants violated plaintiffs' federal civil and state common law rights; and

WHEREAS, defendants have denied any and all liability arising out of plaintiffs' allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees in excess of the amount specified in paragraph "2" below.

2. The City of New York hereby agrees to pay plaintiff Cesar Coca the sum of TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500), and plaintiff Michael Coca the sum of TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS

(\$22,500), in full satisfaction of all of plaintiffs' claims, including claims for costs, expenses, and attorneys' fees. In consideration for the payment of this sum, plaintiffs agree to dismissal with prejudice of all the claims against the named defendants, the City of New York and Christopher Schilling, and to release all of defendants, including the defendants named herein as "JOHN/JANE DOES 1 through 3," and any present or former employees and agents of the City of New York or any agency thereof, including, but not limited to, the New York City Police Department, from any and all liability, claims, or rights of action which were or could have been alleged in this action, including claims for costs, expenses, and attorneys' fees.

3. Plaintiffs shall each execute and deliver to defendant's attorney all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph 2 above and an Affidavit of Status of Liens. If Medicare has provided payment and/or benefits for any injury or condition that is the subject of this lawsuit, prior to tendering the requisite documents to effect this settlement, plaintiffs shall have notified Medicare and shall submit with the settlement documents a Medicare final demand letter for conditional payments. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. §1395y(b) and 42 C.F.R. §§411.22 through 411.26.

4. Nothing contained herein shall be deemed to be an admission by the defendants that they in any manner or way violated plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.


5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

6. Plaintiff agrees to hold harmless the City of New York, defendant Christopher Schilling and the individuals named herein as “JOHN/JANE DOES 1 through 3” regarding any liens or past and/or future Medicare payments, presently known or unknown in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendants reserve the right to issue a multiparty settlement check, naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare’s final demand letter.

7. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: Brooklyn, New York
_____, 2011

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By: 

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By: 

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SO ORDERED:

HON. RAYMOND J. DEARIE
UNITED STATES DISTRICT JUDGE